

LEA-FSMC Documents Checklist

General Information

This checklist is based on the requirements contained in 7 CFR Parts 210, 210.16, 3016, 3017 and 3018. This checklist does not include the requirements applicable to those FSMC's subject to the provisions of 7 CFR 250.30, state processing of USDA donated food. For information regarding those requirements, the LEA should contact the ADE. The LEA must ensure that they use only approved ADE food processors currently on state contract.

Though the checklist identifies certain unallowable LEA-FSMC contract document provisions (page 9) and advisable contract document provisions (pages 10 and 11), it is in no way inclusive of all such provisions. The ADE **must** carefully examine the contract documents to ensure that it **does not** contain other unallowable contract document provisions as well as provisions that are **not** in the best interest of the LEA. Careful scrutiny of the contract documents is required to ensure that there are no provisions that have the effect of restricting competition.

Contract Document Review

ADE reviews are required of contracts, proposed IFBs/RFPs, and all contract renewals. This checklist should be completed by the LEA and submitted with the reviewed documents to the ADE within the suggested timeframe established by the ADE. **Note: A signature from an authorized representative is required on the cover sheet.**

Instructions

In the blanks provided, for each of the required provisions contained in the checklist, indicate the page number in the documents where the provision is contained.

The following sections should be completed or updated, as applicable:

Section A. Cover Sheet, page 3

Section B. LEA Responsibilities, pages 4 and 5

Section C. FSMC Responsibilities, page 6

Section D. General Terms - All LEA-FSMC Contracts, pages 7 and 8

The following section(s) should be completed or updated, as applicable (in the case of a cost-reimbursable contract, the total value of the contract must reflect the management and administrative fees as well as the direct costs incurred by the FSMC which are billed to the LEA such as food and labor):

Section E. LEA-FSMC Contracts in Excess of \$2,500, page 7

Section F. LEA-FSMC Contracts in Excess of \$10,000, page 7

Section G. LEA-FSMC Contracts in Excess of \$100,000, page 8

Section H. LEA-FSMC Contracts Involving Research, Developmental, Experimental and Demonstration Work, page 8

The following section should be completed or updated:

Section I. Unallowable LEA-FSMC Contract Document Provisions, page 9

Section J. Advisable Inclusions, pages 10 and 11

Initial Contract- LEA must include a copy of the checklist when submitting the IFB/RFP and contract to ADE.

Contract Renewal-if the option for the yearly renewal of a contract is exercised the LEA must include:

1. A current signed copy of the certification regarding debarment and suspension (FSMC only)
2. A current signed copy of the certification regarding lobbying (FSMC only)
3. A current signed copy of the amendment with any changes noted

Please submit a signed copy of the amendment to ADE for review prior to beginning food service operations. A completed on-line application must also be approved to receive reimbursement for claims.

If you have any questions, please call Brian Walsh, contracts officer for the ADE/Health and Nutrition office at (602) 542-6208, or by email bwalsh@ade.az.gov

LEA-FSMC Documents Checklist

Section A - Cover Sheet

LEA Use: Review of the following attached documents was completed relative to the applicable requirements contained in this checklist.

Proposed Documents:

☐ Invitation for Bid (IFB)

☐ Request for Proposal (RFP)

☐ Contract

For Contract Award:

Name of FSMC: _____

Agreement No.: _____ Contract Value: _____

Fee Structure of Contract ☐ Fixed Fee ☐ Cost-plus-a-fixed-fee (cost reimbursable)

Local Education Agency: _____

School Name(s): _____

Period Covered by Contract: From: _____ To: _____
(Date) (Date)

I have reviewed these documents and certify that they are accurate to the best of my knowledge.

LEA Authorized Representative: _____ Date: _____
(Signature)

State Agency Use

Date Received: _____

Date Approved: _____

Action Taken:

State Agency Reviewer: _____ Date: _____
(Signature)

Section B - LEA Responsibilities

Page No.	Compliance (ADE ONLY)			
_____ 1.	Yes	No	NA	Provisions under Program Agreement, §210.16(a)(2) -ensure that the food service operation is in conformance with the LEA's agreement under the program.
_____ 2.	Yes	No	NA	Signature Authority, §210.16(a)(5) -retain signature authority on the ADE-LEA agreement, free and reduced price policy statement and Claims for Reimbursement.
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_____ 3.	Control of the School Food Service Account and Overall Financial Responsibility			
_____ a.	Yes	No	NA	§210.16(a)(4) -retain control of the nonprofit school food service account and overall financial responsibility for the nonprofit food service operation; and
_____ b.	Yes	No	NA	retain control for the establishment of all prices, including price adjustments, for meals served under the nonprofit school food service account, e.g., pricing for reimbursable meals, a la carte service including vending machines, and adult meals.
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_____ 4.	USDA Donated Foods			
_____ a.	Yes	No	NA	§210.16(a)(6) -retain title to USDA donated foods; and
_____ b.	Yes	No	NA	ensure that all USDA donated foods made available to the FSMC, including processed USDA donated foods, accrue only to the benefit of the LEA's nonprofit school food service and are fully utilized therein. All refunds received from processors must be retained by the LEA.
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_____ 5.	Quality, Extent and General Nature of Food Service			
_____ a.	Yes	No	NA	§210.16(c)(3) -provide detailed specifications for each food component or menu item as specified in 7 CFR Part 210, and include these specifications in the IFBs or RFPs. Specifications must cover items such as grade, purchase units, style, condition, weight, ingredients, formulations, and delivery time.
_____ b.	Yes	No	NA	§210.16(a)(4) -retain control of the quality, extent, and general nature of its food service.
_____ c.	Yes	No	NA	§210.16(c)(3) -make no payment for meals that are spoiled or unwholesome at the time of delivery, do not meet detailed specifications or do not otherwise meet the requirements of the contract.
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_____ 6.	Yes	No	NA	Health Regulations, §210.16(a)(7) -maintain all applicable health certifications and assure that all State and local regulations are being met by a FSMC preparing or serving meals at a LEA facility.

**Section B - LEA Responsibilities
(continued)**

Page No.	Compliance (ADE ONLY)			
_____ 7.	Yes	No	NA	Monitoring Responsibilities, §210.16(a)(3) -monitor the food service operation through periodic on-site visits to ensure the food service is in conformance with program regulations.
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_____ 8.	Yes	No	NA	Use of Advisory Board, §210.16(a)(8) -establish and maintain an advisory board composed of parents, teachers, and students to assist in menu planning.
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_____ 9.	Yes	No	NA	21-Day Cycle Menu, §210.16(b)(1) -include a 21-day cycle menu developed in accordance with the meal pattern requirements specified in 7 CFR Part 210. (Include sample menus)

Section C - FSMC Responsibilities

Page No.	Compliance (ADE ONLY)			
_____ 1.	Yes	No	NA	Health Certification, §210.16(c)(2) -maintain all applicable State and/or local health certification(s) for the duration of the contract for any facility outside the school in which it proposes to prepare meals. The FSMC must meet all applicable State and local health regulations in preparing and serving meals at the LEA facility.
_____ 2.	Yes	No	NA	21-Day Cycle Menu, §210.16(b)(1) -adhere to the 21-day cycle menu which was included in the IFB or RFP for the first 21 days of meal service. Changes thereafter may only be made with the approval of the LEA.
_____ 3.	Yes	No	NA	Provision of Free and Reduced Price Meals, §210.16(a) -in order to offer a la carte food service, the FSMC must also offer free, reduced price and full price reimbursable meals to all eligible children.
_____ 4.	Yes	No	NA	USDA Donated Foods, §210.16(a)(6) -to the maximum extent possible, utilize USDA donated foods made available by the LEA solely for the purpose of providing benefits for the LEA's food service operation.
_____ 5.	Yes	No	NA	Recordkeeping, §3016.36 (i)(10), and §210.16(c)(1) - maintain records to support the LEA's claim for reimbursement; make all records available to the LEA upon request; and retain all records for a period of three (3) years after the LEA submits the final claim for reimbursement for the fiscal year for inspection and audit by representatives of the LEA, ADE, USDA and Comptroller General, at any reasonable time and place. In instances where audit findings have not been resolved, the records must be retained beyond the three (3) year period until resolution of the issues raised by the audit.
_____ 6.	Yes	No	NA	Reporting, §210.16(c)(1) -report the claim information to the LEA promptly at the end of each month or more frequently as specified by the LEA.
_____ 7.	Yes	No	NA	Civil Rights Compliance -assurance that the FSMC will conform with all civil rights requirements applicable to the LEA.
_____ 8.	Yes	No	NA	Buy American Provision -compliance with the Buy American provision under 7 CFR 210.21 (d)(2) .

Section D - General Terms - All LEA-FSMC Contracts

Page No. **Compliance
(ADE ONLY)**

1. Contract Duration

- _____ a. Yes No NA **§210.16(d)**-contracts must be of a duration no longer than one (1) year.
- _____ b. Yes No NA **§210.16(d)**-options for the yearly renewal of a contract may not exceed four (4) additional one-year extensions.

_____ **2.** Yes No NA **Energy Policy and Conservation Act, §3016.36 (i)(13)**

_____ **3.** Yes No NA **Termination Clause, §210.16(d)**-either party may cancel for cause with 60-day notification.

_____ **4.** Yes No NA **Nonperformance Sanctions -§3016.36 (i)(1)** -provisions allowing for administrative, contractual, or legal remedies in instances where the FSMC violates or breaches contract terms, and providing for such sanctions and penalties as may be appropriate.

Section E - LEA-FSMC Contracts in Excess of \$2,500 Involving Food Service Workers Whose Duties are Manual or Physical in Nature

☐ Indicate with a check mark (✓) in the block if the following provision is not applicable.

Page No.

_____ Yes No NA **Contract Work Hours and Safety Standards Act, §3016.36 (i)(6)**

Section F - LEA-FSMC Contracts in Excess of \$10,000

☐ Indicate with a check mark (✓) in the block if the following provisions are not applicable.

Page No.

_____ **1.** Yes No NA **Termination Clause - §3016.36 (i)(2)**

_____ **2.** Yes No NA **Equal Employment Opportunity - §3016.36 (i)(3)**

Section G - LEA-FSMC Contracts in Excess of \$100,000

Compliance (ADE ONLY)

☐ Indicate with a check mark (✓) in the block if the following provision is not applicable.

Date Signed

_____ Yes No NA **Debarment, Suspension, Ineligibility and Voluntary Exclusion-Lower Tier Covered Transactions, §3017**-certification regarding debarment/suspension from participating in Federal contracts/grants/awards. **A new certification is also required for each renewal period.**

☐ Indicate with a check mark (✓) in the block if the following provision is not applicable.

Date Signed

_____ Yes No NA **Certification Regarding Lobbying, §3018**-a new certification is also required for each renewal period.

☐ Indicate with a check mark (✓) in the block if the following provision is not applicable.

Date Signed

_____ Yes No NA **Disclosure of Lobbying Activities, §3018**-If there are any lobbying activities in connection with school nutrition programs they must be disclosed. If there are material changes after the initial filing, updated reports must be submitted on a quarterly basis.

☐ Indicate with a check mark (✓) in the block if the following provision is not applicable.

Page No.

_____ Yes No NA **Clean Air Act, Clean Water Act, and Environmental Protection Agency Regulations, §3016. 36(i) (12)**

Section H - LEA-FSMC Contracts Involving Research, Developmental, Experimental and Demonstration Work

☐ Indicate with a check mark (✓) in the block if the following provision is not applicable.

Page No.

_____ Yes No NA **USDA Rights to Copyrights, Patent Rights and Rights in Data and Reporting of Discoveries and Inventions, §3016.36 (i)(7-9)**

Section I - Unallowable LEA-FSMC Contract Document Provisions

The following indicate problem areas that have been identified in LEA-FSMC contract documents. The contract documents must be thoroughly checked, regardless of the procurement method used, to ensure that these areas have not been included, in any form. Indicate with a check mark (✓) in each block that the review of the documents indicates that there are no such provisions in the reviewed documents, unless specified below.

Check (✓) as described above.

Compliance (ADE ONLY)

- | | | | | | |
|--------------------------|----|-----|----|----|---|
| <input type="checkbox"/> | 1. | Yes | No | NA | Cost Plus a Percentage of Cost/Income -cost plus a percentage of cost/income to the FSMC, however represented. §210.16(c) |
| <input type="checkbox"/> | 2. | Yes | No | NA | Duplicate Fees -fee structures that permit a FSMC to bill management fees and charge the same costs as cost-reimbursable expenses. |
| <input type="checkbox"/> | 3. | Yes | No | NA | Purchasing -if the LEA does the purchasing, clauses that limit the selection of vendors to only FSMC-approved vendors. |
| <input type="checkbox"/> | 4. | Yes | No | NA | Acceleration Clause -provisions (multi-year) that require full payment (e.g., program equipment purchases) if the contract is not renegotiated. |
| <input type="checkbox"/> | 5. | Yes | No | NA | Interest Payments -interest payments to the contractor, however represented, including interest payments for equipment purchases. OMB Circular A-87 |
| <input type="checkbox"/> | 6. | Yes | No | NA | Delegation of LEA Responsibilities -FSMC responsibility for any of the functions that must be retained by the LEA. |
| <input type="checkbox"/> | 7. | Yes | No | NA | Automatic Renewal -provisions which automatically renew the contract. |
| <input type="checkbox"/> | 8. | Yes | No | NA | Processing Contracts -contract document language that permits the FSMC to subcontract USDA donated foods for further processing. |

For the item(s) above not checked (✓), indicate item number(s) with corresponding page number(s) of documents where provision(s) appears.

Item Number(s)	Page Number(s)	(ADE ONLY)

Section J - Advisable Inclusions

Though the items below are not regulatory in nature, they have been included to offer technical assistance to the LEA in developing contractual language that will ensure that the best interest of the LEA is served by the contract.

Page No.	Inclusion (ADE ONLY)			
_____ 1.	Yes	No	NA	Compliance with Program Regulations -requirement that the FSMC conduct program operations in accordance with 7 CFR Parts 210, 215, 220, 225 and 250 .
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_____ 2.	USDA Donated Foods			
_____ a.	Yes	No	NA	Method which delineates how the FSMC will pass the value of USDA donated foods used to the LEA.
_____ b.	Yes	No	NA	Specific statement that USDA donated foods are not to be used for special functions conducted outside the nonprofit school food service (e.g., catered meals).
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_____ 3.	Yes	No	NA	Special Functions -method which delineates the cost allocation for special functions (ie, catering, meetings, etc.) conducted outside the nonprofit school food service. The method should demonstrate that labor costs are not being double billed for program meals and special function meals.
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_____ 4.	Fee Structure			
_____ a.	Yes	No	NA	In a cost-reimbursable contract, requirement for breakdown of administrative and management fees in order to prevent double billing.
_____ b.	Yes	No	NA	Basis for fee adjustments.
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_____ 5.	Purchasing			
_____ a.	Yes	No	NA	In a cost-reimbursable contract, if the FSMC makes purchases, the prices charged the LEA must be reasonable and necessary.
_____ b.	Yes	No	NA	A provision stating that any silence, absence or omission from the contract document specifications concerning any point shall be regarded as meaning that only the best commercial practices are to prevail, and that only materials (food, supplies, etc.) and workmanship of a quality that would normally be specified by the LEA are to be used.
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_____ 6.	Yes	No	NA	Certification of Independent Price Determination -certification regarding non-collusion. This certification may be met through the use of the Certification of Independent Price Determination form.

**Section J - Advisable Inclusions
(continued)**

Page No.	Inclusion (ADE ONLY)			
7.	Claim Liability			
_____ a.	Yes	No	NA	The FSMC accepts liability caused by FSMC negligence for claims assessed as a result of Federal/State reviews/audits, corresponding with the LEA's period of liability.
_____ b.	Yes	No	NA	The FSMC accepts liability for any negligence on its part that results in any loss of, improper use of, or damage to USDA donated foods.
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_____ 8.	Yes	No	NA	Location of Records -all FSMC records pertaining to the LEA should be maintained at the LEA while the contract is in effect, and preferably for the required retention period.
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_____ 9.	Yes	No	NA	Nutrition Education -FSMC responsibility for nutrition education activities, as applicable.
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_____ 10.	Yes	No	NA	Scope of Services to be Provided - Specify programs to be operated, i.e. food service for National School Lunch Program, National School Breakfast Program, Special Milk Program, Afterschool Snack Program, vending machines, concession stands, catering, vending to other schools, etc, by the FSMC and, additionally provide an accurate description of the technical requirements for the scope of services to be provided, if applicable.
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_____ 11.	Yes	No	NA	Bid Bond (Fixed Amount) - To protect the school's interest in the event that the offeror does not comply with all the contractual documents after being issued an award.